

DECISION**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548**

FILE: B-186790

DATE: September 1, 1976 ¹⁶¹⁴³⁰

MATTER OF: Marine Inventory Surveyors

98092

DIGEST:

Inadvertent omission of bidder from applicable bidder's mailing list is not compelling reason to cancel solicitation or question award when there is no evidence of conscious or deliberate effort by procurement activity to preclude bidder from competing and adequate competition results in reasonable prices.

Marine Inventory Surveyors (Marine) protests any award under invitation for bids No. N00600-76-B-0128, issued by the Naval Regional Procurement Office, Washington Navy Yard, and requests that the procurement be resolicited so that Marine might also bid. Marine states that it had been on the bidders' list of this procurement activity for many years, had completed several contracts of this type for the Department of the Navy (the most recent apparently being 1973 contracts), and has bid every solicitation it has had the opportunity to receive. It is stated that while on the bidders' list it submitted a bid on invitation for bids No. N00600-76-B-0002, issued by the Navy Purchasing Office, Washington, D. C. Notwithstanding, it was not sent the invitation for this procurement. It is believed by Marine that to allow it to bid is in the best interests of the Government because the more competition the better the prices received.

The invitation was issued on May 28, 1976, to 21 firms, whose names were obtained from the following five sources:

1. List 9901-1, "Material Identification, Stock Numbering and Inventory Processing," from the activity's Official Commodity-Services Bidders' Mailing List;
2. A suggested bidders' list of the requiring activity;
3. A May 17 synopsis of the procurement in the Commerce Business Daily;

4. Firms listed on the procurement list of last year who were not listed on the previous lists; and
5. Phone requests to the negotiator from firms who had heard of the procurement and wished to be placed on the mailing list.

The opening date was June 25, and award not later than June 30 was felt to be imperative since the existing contract for the work expired on June 30 and a backlog of work existed. Six bids, four of them responsive, were received.

Apparently, the owner of Marine called the procurement negotiator on June 21 and requested to be placed on the mailing list so as to receive this invitation. He also asked why Marine was not on the list and requested that the bid opening be delayed so that Marine could bid. The negotiator called the requiring activity to inquire if the bid opening could be extended to June 28 and was told that an opening on June 28 would not permit an award by June 30, an award date considered to be imperative. The negotiator then called Marine to inform it that opening could not be delayed; allegedly, the Marine representative did not request during the conversation to be sent the invitation. According to Marine, the negotiator specifically told Marine during this conversation that he would not send Marine a copy of the invitation.

Apparently, also, the negotiator inquired of personnel in the procurement activity bid room whether Marine had been taken off the mailing list. He was informed that Marine was not on the list, was not listed on any of the five sources used to make the list for this procurement, and did not have a form SF-129 (Bidders' Mailing List Application) on file. Marine notes the latter is true because it was never sent this form so that it might be filed. We are informed that there is no official (i.e., maintained and updated by the procurement activity bid room) mailing list for the services being procured here and that such lists are only made up on a case by case basis. Also, we are advised that the two 1973 contracts mentioned by Marine were not for the same services being procured here. Marine, notwithstanding, maintains it has done work of the type being procured here. The mailing lists for those two procurements were also made up on a case by case basis, and the two lists were not incorporated into the activity's official bidders' mailing list. It is further stated that the entire official bidders' list was updated in January 1976 by sending every firm then on the list a revised commodity list and a form SF-129. Firms not returning the form were removed from the list.

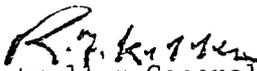
B-186790

Finally, it is noted that the contracting officer attempted to solicit as much competition as possible, and that adequate price competition was obtained on the procurement in view of the fact that three of the four responsive bids received quoted prices lower than the award price of the preceding contract.

We have long held that the inadvertent actions of an agency which preclude a potential supplier (even an incumbent contractor) from competing on a procurement do not constitute a compelling reason to resolicit so long as adequate competition was generated and reasonable prices were obtained, and there was no deliberate or conscious attempt to preclude the potential supplier from competing on the procurement. Scotts Graphic, Incorporated, et al., 54 Comp. Gen. 973 (1975), 75-1 CPD 302, and cases cited therein. There is no indication that Marine was deliberately excluded, and it does appear that adequate competition and reasonable prices were obtained. Under these circumstances, although it is unfortunate that Marine was excluded, our precedents clearly provide that a resolicitation is not required. Modular Ambulance Corporation; Star-Line Enterprises, Inc., B-185043, January 27, 1976, 76-1 CPD 51.

However, we trust that the activity will in the future solicit Marine by placing that firm on its Official Commodity-Services Bidders' Mailing List.

For the above reasons, we must deny the protest.


Acting Comptroller General
of the United States